

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

BAUSCH HEALTH US, LLC,

Plaintiff,

v.

ECI PHARMACEUTICALS LLC,

Defendant.

Case No. [3:18-cv-00355-RS](#) (KAW)

**ORDER REGARDING 2/14/20 JOINT  
DISCOVERY LETTER #2  
CONCERNING CUSTODIANS**

Re: Dkt. No. 159

On February 14, 2020, the parties filed a motion to file under seal and a joint discovery letter concerning ECI Pharmaceutical LLC (“ECI”)’s choice of custodians. (*See* Mot. to File Under Seal, Dkt. No. 159; Joint Letter, Dkt. No. 159-4.) The Court granted the motion to file under seal.

**A. Documents pertaining to Mr. Himanshu Sud**

First, Plaintiff Bausch Health US, LLC (“Bausch”) seeks to compel ECI to “collect and produce responsive, relevant information from Mr. Himanshu Sud in ECI’s possession.” (Joint Letter at 1.) In opposition, ECI argues that Mr. Himanshu Sud is an outside consultant working at RD2Rx, and that his company produced documents in response to the subpoena, and that it believes that the production is “most certainly substantially complete and in a ‘usable format.’” (Joint Letter at 2-3.) Previously, and in an attempt to assist the parties in their meet and confer efforts, the undersigned informed the parties that “Plaintiff’s position that Defendant must turn over all documents in its possession created by Mr. Himanshu Sud is well taken even though he is a contractor rather than an employee. It is irrelevant that Plaintiff has separately subpoenaed Mr. Sud and his employer for all documents in their possession.” (Dkt. No. 153 at 1.) The Court again finds that ECI is not excused from its discovery obligation simply because non-party RD2Rx has


1 produced documents in response to a subpoena, because ECI may possess responsive documents  
2 other than those produced by RD2Rx. The Court notes that the same counsel represents ECI and  
3 RD2Rx, and Bausch claims that documents from entire categories have not been produced. (Joint  
4 Letter at 2.) Accordingly, ECI is ordered to produce all responsive documents in its possession  
5 within 2 weeks of this order. ECI need not, however, collect documents from Mr. Himanshu Sud  
6 or RD2Rx that are not in its possession.

7 **B. Custodians**

8 Second, Bausch wishes to include three individuals—Abul Bhuyian, Linda Lyles, and Lori  
9 Martinez—whom ECI identified in its interrogatory responses as most knowledgeable about issues  
10 central to the case, as custodians. (Joint Letter at 1, 5.) These three individuals, however, no longer  
11 work for ECI, and, therefore, cannot serve as custodians of records. Moreover, Bausch provides no  
12 legal authority to suggest that they can. Thus, Plaintiff's request to have these former employees  
13 be named custodians is denied.

14 IT IS SO ORDERED.

15 Dated: March 6, 2020

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17 KANDIS A. WESTMORE  
18 United States Magistrate Judge  
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